

## REMARKS

Claims 1-30 remain in the application. Claim 18 has been amended.

Claim 18 stands rejected under 35 U.S.C. §112, second paragraph, on the basis the use of “may be” is indefinite. Responsive thereto, Applicant has amended claim 18 to recite that the application of less than around 5 lbs (2.2 kg) of force varies the stem length, thereby removing “may be” from the claim. Applicant accordingly respectfully submits the 35 U.S.C. §112, second paragraph, rejection of claim 18 has been overcome.

Claims 1-4, 6-14, and 18-30 stand rejected under 35 U.S.C. §102(b) by Garguillo et al. (U.S. Patent No. 5,418,983 – hereinafter referred to as Garguillo). Applicant respectfully traverses the above-recited rejection on the basis Garguillo in fact does not disclose each and every feature recited in the claims.

Claim 1 recites a seal and a stem received in an outlet waste with the stem being selectively adjustable in length for selectively engaging the seal with a portion of the outlet waste. Claim 1 further recites that the stem is adjustable in length responsive to a compressive force exerted on the stem. Claim 1 accordingly specifically recites that adjustment in the length of the stem responsive to a compressive force results in the seal either engaging and thus sealing the waste outlet or disengaging and thus opening the waste outlet. Applicant respectfully submits Garguillo simply does not disclose a stem selectively adjustable in length.

Garguillo discloses a decorative color changeable basket sink strainer assembly 10 comprised of a strainer body 12, a decorative insert 14, a basket assembly 16, and a cup member 31. The strainer body 12 engages the top of a sink bottom 5 and extends through a drain hole 7 of the sink bottom 5 where a threaded section 22 of the strainer body 12 engages conventional drain plumbing. The cup member 31 engages the underside of the sink bottom 5 in a position about the

strainer body 12. The cup member 31 is held in place via a locknut 40 that engages the threaded section 22 of the strainer body 12. The strainer body 12 and the cup member 31 form a drain in the sink bottom 5 that permits flow from the sink bottom 5 to conventional drain plumbing. The decorative insert 14 fits within the strainer body 12 merely for the purpose of providing an aesthetic appearance in the sink bottom 5. The decorative insert 14 is secured to the strainer body 12 by a hollow screw means 60 that engages a threaded nut 32 attached to the strainer body.

The basket assembly 16 includes a strainer basket 70, a stem 72 having a spring-retractable ball retainer 74, a pull knob 76, and a stopper cup 78. The basket assembly 16 fits within the decorative insert 14 to seal the decorative insert and prevent flow from the sink bottom 5 to conventional drain plumbing. In particular, the portion of the stem 72 with the spring-retractable ball retainer 74 fits within a bore 61 of the hollow screw means 60 such that the spring-retractable ball retainer 74 engages the bore 61 to hold the basket assembly 16 within the decorative insert 14; the stopper cup 78 engages the decorative insert 14, thereby sealing decorative insert 14, and the strainer basket 70 fits with the decorative insert 14. Accordingly, the stem 72 is completely rigid and in no way adjusts in length to engage the stopper cup 78 with the decorative insert 14. The basket assembly 16 is manually inserted into the decorative insert 14, and there simply is no feature or mechanism in the stem 72 that adjusts its overall length to achieve opening and closing of the decorative insert 14. Moreover, while the spring-retractable ball retainer 74 moves in engaging the bore 61, this is a holding feature that in no way adjusts the length of the stem 72. Applicant therefore respectfully submits claim 1 is patentable over Garguillo because the stem 72 disclosed by Garguillo is completely rigid and in no way is selectively adjustable in length responsive to a compressive force such that a seal either engages and thus seals a waste outlet or disengages and thus opens a waste outlet.

Claims 2-4 and 5 are patentable over Garguillo based on the preceding arguments with respect to claim 1.

Claim 7 recites the strainer is removable from the stem or seal. Garguillo does not disclose the strainer basket 70 as removable from the stem 72.

Claims 8-14 are patentable over Garguillo based on the preceding arguments with respect to claim 1.

Claim 18 recites a variable stem length. The stem 72 of Garguillo is rigid and does not adjust in length.

Claim 19 is patentable over Garguillo based on the preceding arguments with respect to claim 1.

Claims 20-23 recite a stem as adapted to connect with a waste outlet. The stem 72 of Garguillo resides in the decorative insert 14 and is not connected to the drain.

Claims 24-30 are patentable over Garguillo based on the preceding arguments with respect to claim 1.

Claims 1, 2, 5, 7-14, 19-21, and 23-30 stand rejected under 35 U.S.C. §102(b) by Peterson et al. (U.S. Patent No. 6,067,669 – hereinafter referred to as Peterson). Applicant respectfully traverses the above-recited rejection on the basis Peterson in fact does not disclose each and every feature recited in the claims.

Claim 1 recites a seal and a stem received in an outlet waste with the stem being selectively adjustable in length for selectively engaging the seal with a portion of the outlet waste. Claim 1 further recites that the stem is adjustable in length responsive to a compressive force exerted on the stem. Claim 1 accordingly specifically recites that adjustment in the length of the stem responsive to a compressive force results in the seal either engaging and thus sealing

the waste outlet or disengaging and thus opening the waste outlet. Applicant respectfully submits Peterson simply does not disclose a stem selectively adjustable in length.

Peterson discloses a drain plug assembly comprised of a replacement housing 12, a rigid stem 16, a strainer 30, a stopper 50, and a knob 60. The replacement housing 12 is exteriorly threaded at 14 to be turned into a drain opening of a bathtub. The strainer 30 fits within the housing 12, and the stopper 50 fits within the strainer 30 in a position such that a valve head 74 of the stopper 50 can engage a flange 80 of the housing 12. The rigid stem 16 fits through the stopper 50 and threads into a boss 20 of the housing 12. The knob 60 fits over the rigid stem 16 and threads into the stopper 50. In operation, pressing the knob 60 down forces the valve head 74 of the stopper 50 onto the flange 80 of the housing 12, thereby sealing the drain. Lifting the knob 60 moves the valve head 74 of the stopper 50 away from the flange 80 of the housing 12, thereby opening the drain. In opening and closing the drain, the stopper 50 moves relative to the rigid stem 16 which remains stationary. Accordingly, and as disclosed, the stem 16 is completely rigid and in no way adjusts in length to facilitate engagement of the stopper 50 with the flange 80 of the housing. There simply is no feature or mechanism in the rigid stem 16 that adjusts its overall length to achieve opening and closing of the drain. Applicant therefore respectfully submits claim 1 is patentable over Peterson because the stem 16 disclosed by Peterson is completely rigid and in no way is selectively adjustable in length responsive to a compressive force such that a seal either engages and thus seals a waste outlet or disengages and thus opens a waste outlet.

Claim 2 recites the strainer as being located above the seal. The strainer 30 of Peterson resides below the valve head 74 of the stopper 50.

Claim 5 is patentable over Peterson based on the preceding arguments with respect to claim 1.

Claim 7 recites the strainer as being removable from the stem or seal. The strainer 30 of Peterson does not connect with the rigid stem 16 or the stopper 50.

Claims 8-14, 19-21, and 23-30 are patentable over Peterson based on the preceding arguments with respect to claim 1.

Claims 15-17 stand rejected under 35 U.S.C. §103(a) by Garguillo or Peterson in view of Downey et al. (U.S. Patent No. 3,428,295 – hereinafter referred to as Downey).

Regarding the combination of Garguillo in view of Downey as suggested by the Examiner, Applicant respectfully submits that the combination violates M.P.E.P Section 2143.01(V). M.P.E.P Section 2143.01(V) states, “If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). Applying M.P.E.P Section 2143.01(V), there can be no suggestion or motivation to employ the push-activated valve of Downey in place of the stem 72 of Garguillo because the push-activated valve of Downey renders Garguillo’s decorative color changeable basket sink strainer assembly unable to perform according to its intended purpose. Garguillo specifically recites in column 1, lines 30-35, “... for changing the décor, appearance or color of the drain body while at the same time allowing the use of “removable” basket sink strainers which have a ball stem holding.” Garguillo accordingly specifically discloses that the sink strainer assembly uses a “removable” basket sink strainer in that the basket sink strainer is separable from the basket sink strainer assembly without disassembly. In contrast, the push-activated valve of Downey must be secured to a drain, and removing the push-activated valve of Downey requires a complicated disassembly process that involves multiple parts including push button 15, front housing part 20, mounting post 33, back housing part 36, indexing ring element

50, and springs 31 and 55. As such, substituting the push-activated valve of Downey for the stem 72 of Garguillo requires that the basket sink strainer be secured to the decorative insert such that the basket sink strainer is not “removable” without disassembly. It is thus clear that substituting the push-activated valve of Downey for the stem 72 of Garguillo renders the basket sink strainer assembly incapable of satisfying a special feature of its design. It is impossible for the basket sink strainer to be “removable” because removal of the push-activated valve of Downey requires a complicated disassembly process that certainly does not satisfy the definition of “removable”. Applicant therefore respectfully submits that there is in fact no suggestion or motivation to modify the Garguillo basket sink strainer assembly with the Downey push-activated valve because such a modification renders the Garguillo basket sink strainer assembly unsatisfactory for its intended purpose of being “removable”. Applicant therefore respectfully submits claims 15-17 are patentable over the combination of Garguillo in view of Downey because the resulting combination violates M.P.E.P Section 2143.01(V).

Regarding the combination of Peterson in view of Downey as suggested by the Examiner, Applicant respectfully submits that the combination violates M.P.E.P Section 2143.01(V). M.P.E.P Section 2143.01(V) states, “If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). Applying M.P.E.P Section 2143.01(V), there can be no suggestion or motivation to employ the push-activated valve of Downey in place of the rigid stem 16 of Peterson because the push-activated valve of Downey renders Peterson’s strainer equipped drain plug assembly unable to perform according to its intended purpose. Peterson specifically recites in column 1, lines 42-44, “Other objects are to provide a strainer in the replacement drain

assembly that is easily removed and cleaned to remove trapped materials.” Peterson accordingly specifically discloses that the replacement drain assembly be “easily removable” for regular cleaning in that a simple unthreading of the rigid stem 16 releases the strainer 30. In contrast, the push-activated valve of Downey is not designed for “easy removal” for regular cleaning because any removal requires a complicated disassembly process involving multiple parts including push button 15, front housing part 20, mounting post 33, back housing part 36, indexing ring element 50, and springs 31 and 55. The push-activated valve of Downey was not designed for regular removal from a drain, and it is certainly not reasonable for the push-activated valve of Downey to be considered “easily removable”. As such, substituting the push-activated valve of Downey for the rigid stem 16 of Peterson requires that the strainer equipped drain plug assembly be secured to a drain such that the strainer equipped drain plug assembly is not “easily removable” for regular cleaning. It is thus clear that substituting the push-activated valve of Downey for the rigid 16 of Peterson renders the strainer equipped drain plug assembly incapable of satisfying a special feature of its design. It is impossible for the strainer equipped drain plug assembly to be “easily removable” for regular cleaning because removal of the push-activated valve of Downey requires a complicated disassembly process that certainly does not satisfy the definition of “easily removable”. Applicant therefore respectfully submits that there is in fact no suggestion or motivation to modify the Peterson strainer equipped drain plug assembly with the Downey push-activated valve because such a modification renders the Peterson strainer equipped drain plug assembly unsatisfactory for its intended purpose of being “easily removable” for regular cleaning. Applicant therefore respectfully submits claims 15-17 are patentable over the combination of Peterson in view of Downey because the resulting combination violates M.P.E.P Section 2143.01(V).

The prior made of record but not replied upon has been reviewed by Applicant and is deemed not to anticipate nor render obvious the claimed invention.

In view of the foregoing, Applicant respectfully requests reconsideration of the rejected claims and earnestly solicits early allowance of the referenced application.

Respectfully submitted,

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